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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Carlisle Interconnect Technologies
9 Incorporated,

No. CV-22-00717-PHX-SPL

10 Plaintiff,

ORDER

11 vs.

12 Foresight Finishing LLC, et al.,

13 Defendants.
14

15 Before the Court is the parties' Joint Motion for Discovery Dispute Resolution
16 (Doc. 33). The Court's ruling is as follows.¹

17 **I. BACKGROUND**

18 Plaintiff Carlisle Interconnect Technologies Incorporated ("Plaintiff") and
19 Defendants Foresight Finishing LLC and Foresight Finishing Properties LLC (together,
20 "Defendants") are companies in the interconnect solutions industry. (Doc. 22 at 3). Plaintiff
21 designs and produces "unique cable configurations, custom high-frequency connectors,
22 complete cable assemblies of any complexity, and specialized complex harnesses, racks,
23 and structures." (*Id.*). According to Plaintiff's Complaint, Defendants specialize in "plating
24 connector contracts, RF components, and selective plating of loose piece contacts." (*Id.*).
25 The parties provide their products to a wide variety of industries, and have customers in
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27 ¹ Because it would not assist in resolution of the instant issues, the Court finds the
28 pending motions are suitable for decision without oral argument. *See* LRCiv. 7.2(f); Fed.
R. Civ. P. 78(b); *Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998).

1 the aerospace, military, space, test-and-measurement, industrial, defense, electrical, OEM,
2 medical, and medical-technology markets. (*Id.*). Central to their business models is a
3 process called metal plating. Plaintiff describes the traditional metal plating process in its
4 Complaint:

5 Typical metal plating involves creating an outer coating of
6 metal—such as chromium, copper, gold, or nickel—to inhibit
7 corrosion or to enhance the appearance of the parent metal
8 component. The traditional process—widely used across the
9 industry—involves immersing the metal in an acid solution
10 (commonly referred to as a bath) with an anode electric current
11 and cathode. The solution contains the required metal in an
12 oxidized form. Through the process, the plating material binds
13 on the parent metal to form an outer coating.

14 (*Id.* at 4).

15 In 2011, Plaintiff acquired Tri-Star Electronics Incorporated (“Tri-Star”), an
16 international supplier of electronic interconnect components. (*Id.*). As part of the
17 acquisition, Plaintiff acquired “substantial intellectual property assets, trade secrets, and
18 proprietary information,” including an *alternative* metal plating process—originally
19 developed by Tri-Star—known as the “Selective Plating Process.” (*Id.*). According to
20 Plaintiff’s Complaint, the Selective Plating Process is more efficient and superior to the
21 traditional process and is unique in the industry. (*Id.*). The Selective Plating Process uses
22 65–85 percent less gold than the traditional method, resulting in \$125,000 to \$200,000 in
23 savings per one million pieces processed. (*Id.*).

24 Plaintiff considers the Selective Plating Process a critical asset of the company. (*Id.*
25 at 5). To maintain its secrecy and confidentiality, Plaintiff maintains the Selective Plating
26 Process in a restricted area of its facility where only credentialed employees have access.
27 (*Id.*). Plaintiff stores all confidential and proprietary information concerning the Selective
28 Plating Process on a secured, restricted access drive. (*Id.*). Plaintiff’s employees are bound
by the company’s Employee Handbook, Code of Conduct, and two specific agreements—
a Confidentiality and Discretion Agreement, and an Employee Invention and Secrecy
Agreement—all of which contain provisions aimed at protecting the confidential and

1 proprietary nature of the Selective Plating Process. (*Id.* at 5–8).

2 Between April 2020 and August 2020, Plaintiff terminated four employees (the
3 “Former Employees”) who “had access to and gained intimate knowledge of certain []
4 proprietary and confidential information and trade secrets, including the Selective Plating
5 Process.” (*Id.* at 9–11). Plaintiff alleges that Defendants hired each of the Former
6 Employees to access and benefit from their knowledge of Plaintiff’s proprietary and
7 confidential information and trade secrets—specifically, their knowledge of the Selective
8 Plating Process. (*Id.* at 11–12). In February 2022, Defendants posted on the company’s
9 website and social media platforms that they “had a ‘new’ and ‘proprietary’ capability to
10 ‘selective gold plate contacts with and without shoulders.’” (*Id.* at 12). Defendants included
11 a photograph of its new plating machinery (the “Foresight Machine”), showing its design
12 and components. (*Id.*). Plaintiff alleges that the Foresight Machine—as described in the
13 post and shown in the photograph—utilizes a manufacturing process “nearly identical” to
14 Plaintiff’s Selective Plating Process. (*Id.*).

15 On April 27, 2022, Plaintiff filed this action against Defendants. (Doc. 1). Plaintiff
16 asserts five claims against Defendants: trade secret misappropriation, in violation of the
17 federal Defend Trade Secrets Act (“DTSA”), 18 U.S.C. §§ 1832, *et seq.*, and of the Arizona
18 Uniform Trade Secrets Act (“AUTSA”), A.R.S. § 44-401, *et seq.* (Counts I and II);
19 misappropriation of confidential information (Count III); tortious interference with
20 contract (Count IV); and unfair competition (Count V). (Doc. 22 at 12–19).

21 On December 9, 2022, the parties filed the Joint Motion for Discovery Dispute
22 Resolution. (Doc. 33). Plaintiff seeks an order compelling Defendants to produce
23 documents relating to and an inspection of the Foresight Machine. (*Id.* at 2–3). Defendants
24 have refused to allow such discovery on the grounds that Plaintiff has not yet identified
25 with sufficient particularity what trade secrets were allegedly misappropriated and are at
26 issue in this case. (*Id.* at 3–4). Defendants seek an order requiring Plaintiff “to specifically
27 identify each trade secret allegedly misappropriated.” (*Id.* at 4).

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II. LEGAL STANDARD

The purpose of discovery is to make trial “less a game of blind man’s bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent possible,” *United States v. Procter & Gamble*, 356 U.S. 677, 683 (1958), and “to narrow and clarify the basic issues [in dispute] between the parties.” *Hickman v. Taylor*, 329 U.S. 495, 501 (1947); *see also Stevens v. Corelogic, Inc.*, 899 F.3d 666, 678 (9th Cir. 2018) (“[T]he whole point of discovery is to learn what a party does not know or, without further information, cannot prove.”); *Pac. Fisheries Inc. v. United States*, 484 F.3d 1103, 1111 (9th Cir. 2007) (“[T]he purpose of discovery is to aid a party in the preparation of its case.”). Necessarily, the scope of discovery is generally very broad. Under Rule 26, “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1). “Information within this scope of discovery need not be admissible in evidence to be discoverable.” *Id.*

“[T]he party seeking to compel discovery has the initial burden of establishing that its request satisfies the relevancy requirements of Rule 26(b).” *Doe v. Swift Transp. Co., Inc.*, No. 2:10-cv-00899 JWS, 2015 WL 4307800, at *1 (D. Ariz. July 15, 2015). This is “a relatively low bar,” *Cont’l Cirs. LLC v. Intel Corp.*, 435 F. Supp. 3d 1014, 1018 (D. Ariz. 2020), as relevance in the discovery context is “defined very broadly.” *EEOC v. Scottsdale Healthcare Hosps.*, No. CV-20-01894-PHX-MTL, 2021 WL 4522284, at *2 (D. Ariz. Oct. 4, 2021) (quoting *Garneau v. City of Seattle*, 147 F.3d 802, 812 (9th Cir. 1998)); *see also Cont’l Cirs.*, 435 F. Supp. 3d at 1018–19 (citation and internal quotations omitted) (“[C]ourts generally recognize that relevancy for purposes of discovery is broader than relevancy for purposes of trial.”). Under Federal Rule of Evidence 401, information is relevant if it has “any tendency” to make a fact in dispute “more or less probable.” Fed. R. Evid. 401. If the movant meets its burden of establishing relevancy, “the party opposing discovery has the burden to demonstrate that discovery should not be allowed due to burden or cost and must explain and support its objections with competent evidence.” *Doe*, 2015

1 WL 4307800, at *1. Alternatively, the party from whom discovery is sought may move for
 2 a protective order under Rule 26. *See* Fed. R. Civ. P. 26(c)(1). Rule 26 specifically provides
 3 that the Court “may, for good cause, issue an order to protect a party or person from
 4 annoyance, embarrassment, oppression, or undue burden or expense, including . . .
 5 requiring that a trade secret or other confidential research, development, or commercial
 6 information not be revealed or be revealed only in a specified way.” Fed. R. Civ. P.
 7 26(c)(1)(G). “The burden is upon the party seeking the order to ‘show good cause’ by
 8 demonstrating harm or prejudice that will result from the discovery.” *Rivera v. NIBCO,*
 9 *Inc.*, 364 F.3d 1057, 1063 (9th Cir. 2004) (citation omitted).

10 **III. DISCUSSION**

11 As an initial matter, there is no doubt that the discovery sought by Plaintiff—
 12 documents related to and an inspection of the Foresight Machine—is sufficiently relevant.
 13 Indeed, Defendants do not oppose Plaintiff’s discovery request on relevancy grounds.
 14 Rather, Defendants have refused to allow such discovery on the grounds that Plaintiff has
 15 not yet identified with sufficient particularity what trade secrets were allegedly
 16 misappropriated and are at issue in this case. (Doc. 33 at 3–4). Therefore, Defendants seek
 17 an order requiring Plaintiff “to specifically identify each trade secret allegedly
 18 misappropriated.” (*Id.* at 4). Conversely, Plaintiff contends that it has identified its trade
 19 secrets with sufficient particularity—at least for purposes of discovery—and that
 20 Defendants are well aware of what trade secrets are at issue in this case. (*Id.* at 3).

21 Courts generally require “a party alleging a claim for misappropriation of trade
 22 secrets . . . to identify its alleged trade secrets with reasonable particularity before it will
 23 be allowed to compel discovery of its adversary’s trade secrets.” *Switch Commc’ns Grp. v.*
 24 *Ballard*, No. 2:11-cv-00285-KJD-GWF, 2012 WL 2342929, at *4 (D. Nev. June 19,
 25 2012) (listing cases). Although “[t]here is no privilege excepting trade secrets from
 26 discovery, [] courts must exercise discretion to avoid unnecessary disclosures of such
 27 information.” *BioD, LLC v. Amnio Tech., LLC*, No. 2:13-cv-1670-HRH, 2014 WL
 28 3864658, at *4 (D. Ariz. Aug. 6, 2014) (quoting *Dura Glob. Techs., Inc. v. Magna*

1 *Donnelly, Corp.*, No. 07-cv-10945, 2007 WL 4303294, at *1 (E.D. Mich. Dec. 6, 2007)).
 2 In *BioD*, a court in this District noted “four policies which support delaying trade secret
 3 discovery until the . . . plaintiff has sufficiently described the trade secrets at issue”:

4 (i) “[I]f discovery on the defendant’s trade secrets were
 5 automatically permitted, lawsuits might regularly be filed as
 6 ‘fishing expeditions’ to discover the trade secrets of a
 competitor.”

7 (ii) “[U]ntil the trade secret plaintiff has identified the secrets
 8 at issue with some specificity, there is no way to know whether
 9 the information sought is relevant. . . . Thus, requiring the
 10 plaintiff to sufficiently identify its trade secrets prior to
 allowing discovery on the defendant’s trade secrets helps the
 court to determine the outer permissible bounds of discovery
 and prevents needless exposure of the defendant’s trade
 secrets.”

11 (iii) “[I]t is difficult, if not impossible, for the defendant to
 12 mount a defense until it has some indication of the trade secrets
 allegedly misappropriated.”

13 (iv) “[R]equiring the plaintiff to state its claimed trade secrets
 14 prior to engaging in discovery ensures that it will not mold its
 15 cause of action around the discovery it receives.”

16 *BioD*, 2014 WL 3864658, at *4–5 (quoting *DeRubeis v. Witten Techs., Inc.*, 244 F.R.D.
 17 676, 680–81 (N.D. Ga. 2007)). That said, courts also recognize “at least three policies
 18 which support allowing the trade secret plaintiff to take discovery prior to identifying its
 19 claimed trade secrets”:

20 (i) “[C]ourts have highlighted a plaintiff’s broad right to
 21 discovery under the Federal Rules of Civil Procedure.”

22 (ii) “[T]he trade secret plaintiff, particularly if it is a company
 23 that has hundreds or thousands of trade secrets, may have no
 way of knowing what trade secrets have been misappropriated
 until it receives discovery on how the defendant is operating.”

24 (iii) “[I]f the trade secret plaintiff is forced to identify the trade
 25 secrets at issue without knowing which of those secrets have
 26 been misappropriated, it is placed in somewhat of a ‘Catch-22’
 27 because if the list is too general, it will encompass material that
 the defendant will be able to show cannot be trade secret. If
 28 instead it is too specific, it may miss what the defendant is
 doing.”

1 *Id.* at *5 (quoting *DeRubeis*, 244 F.R.D. at 680). After considering the policies on both
2 sides, the court in *BioD* found it appropriate to require the plaintiffs to identify their trade
3 secrets with reasonable particularity. (*Id.*). As the Court indicated in its March 10, 2023
4 Order (Doc. 51 at 3), this Court follows suit and will require the same.

5 On November 15, 2022, Plaintiff served Defendants with a “Supplemental Trade
6 Secrets Disclosure” (the “Disclosure”) in an effort to avoid this discovery dispute. (Doc.
7 33 at 2). Plaintiff states that “[t]he eight-page disclosure enumerated details of the Selective
8 Plating Process and included 72 photos and videos.” (*Id.* at 2–3 (emphasis omitted)).
9 Defendants were not satisfied and responded by repeating their assertion that Plaintiff had
10 not made a satisfactory disclosure. (*Id.* at 3). On March 10, 2023, the Court ordered Plaintiff
11 to provide it with the Disclosure for *in camera* review. (Doc. 51 at 5). Having reviewed the
12 Disclosure, the Court is now in position to determine whether Plaintiff has sufficiently
13 identified its trade secrets with reasonable particularity such that Defendants should be
14 compelled to provide the discovery Plaintiff seeks.

15 “‘Reasonable particularity’ has been defined as a description of the trade secrets at
16 issue that is sufficient to (a) put a defendant on notice of the nature of the plaintiff’s claims
17 and (b) enable the defendant to determine the relevancy of any requested discovery
18 concerning its trade secrets.” *BioD*, 2014 WL 3864658, at *5 (quoting *Hill v. Best Med.*
19 *Int’l, Inc.*, No. 09-1194, 2010 WL 2546023, at *3 (W.D. Pa. June 24, 2010)). “[W]hether
20 a plaintiff has sufficiently disclosed its trade secrets is a fact-specific question to be decided
21 on a case-by-case basis.” *Vesta Corp. v. Amdocs Mgmt. Ltd.*, 147 F. Supp. 3d 1147, 1155
22 (D. Or. 2015) (internal quotations and citation omitted).

23 Here, Plaintiff discloses as trade secrets “the entirety of its selective plating
24 processes . . . including without limitation devices, assemblies, and software.”² This
25 includes “three types of selective plating machines.” Plaintiff discloses that “[t]he entirety
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27 ² Plaintiff’s Disclosure was not filed on the docket but rather submitted to the Court
28 for *in camera* review. Thus, although the Court quotes directly from the Disclosure, it will
not provide any citation to a specific docket and page number.

1 of each selective plating machine and process is a trade secret, including the functionality,
2 components, arrangement of components, and associated software, all of which are
3 individually and collectively trade secrets.” Plaintiff then lists “[e]xamples of individual
4 components” of its three machines which it considers to be trade secrets on their own *and*
5 when considered collectively. These components include the custom top wheel, the
6 vacuum line and pathways, the nudge tool, certain sensors and cameras, the robotic arm,
7 the custom belt, certain custom software, and the custom bath with a plating solution. The
8 Disclosure briefly describes the functions of many of these components. For example, the
9 custom software “runs all aspects of the machine” and “control[s] the sensors and
10 manage[s] signals from [the sensors].” Likewise, the nudge tool “properly position[s]
11 parts” and the sensors “determine[e] part location and orientation.” The Disclosure also
12 lists various “parameters” of the plating machines which Plaintiff considers to be trade
13 secrets. These parameters include—for example—the “pick” and “reject” positions of the
14 machines, tank volumes, temperature, flow rate, and amps per minute. In addition to this
15 list of components, functions, and parameters the Disclosure included 72 photos and videos
16 of its machines. These photos and videos were intended to supplement Plaintiff’s list of
17 components, parameters, and functions by further disclosing the machines that Plaintiff
18 considers to be trade secrets and by showing the machines in action and fully performing
19 their functions.

20 The Court finds Plaintiff’s Disclosure insufficient. Although Plaintiff may
21 ultimately be permitted to claim the entire Selective Plating Process performed by its
22 machines as a trade secret, Plaintiff must, at this stage, “identify[] the steps in the process
23 and explain[] how those steps make their method or process unique.” *BioD*, 2014 WL
24 3864658, at *6. “It is simply not sufficient for plaintiffs to identify a trade secret as a
25 ‘method’ [or process] without some explanation of why that ‘method’ [or process] could
26 be considered a legally protectable trade secret.” *Id.* Here, the Disclosure claims “the
27 entirety of each selective plating machine and process” to be a trade secret. Although the
28 Disclosure briefly explains the functions of many of the machines’ components, it fails to

1 identify any specific steps in the Selective Plating Process or otherwise explain how such
2 steps were unique to Plaintiff's particular machines. "Plaintiff[] must provide some basis
3 for [its] contention that [its] methods and processes are unique and thus legally
4 protectable." *Id.*

5 Likewise, Plaintiff may ultimately be permitted to claim most or all the machines'
6 individual components and their collective arrangement as trade secrets. At this stage,
7 however, Plaintiff "must specifically describe what particular combination of components
8 renders each of its designs novel or unique, how the components are combined, and how
9 they operate in unique combination." *Switch*, 2012 WL 2342929, at *5 (citation omitted);
10 *see also Knights Armament Co. v. Optical Sys. Tech., Inc.*, 254 F.R.D. 463, 467 (M.D. Fla.
11 2008) ("[I]t is insufficient to describe the trade secrets by generic category, such as the
12 components of the [] devices to which the alleged trade secrets relate. Rather, [the plaintiff]
13 must identify the specific characteristics of each trade secret, such as a particular drawing,
14 process, procedure or cost/pricing data."). Plaintiff's Disclosure fails to do this. Rather, it
15 merely lists the components and provides a few words—for *some* of those components—
16 describing their functionality. *See Vesta Corp.*, 147 F. Supp. 3d at 1156 ("Plaintiff's
17 disclosures do not specify any trade secrets, 'but rather reveal the end results of, or
18 functions performed by, the claimed trade secrets.'"). The Disclosure does not explain what
19 makes those components—or their arrangement—unique as compared to what is already
20 publicly available or generally known. *See BioD*, 2014 WL 3864658, at *6 ("Plaintiffs
21 must explain how the combination of much of what appears to be generally known
22 information can constitute a trade secret.").

23 To be sure, Plaintiff's Disclosure comes close to satisfying the "reasonable
24 particularity" standard. It specifies that Plaintiff's trade secrets include Plaintiff's selective
25 plating machines *and* the entire Selective Plating Process. It lists numerous components of
26 the machines and describes the functionality of some of those components. It also includes
27 72 photos and videos demonstrating what the machines and their components look like and
28 how they function. Plaintiff's Disclosure does *not*, however, identify or explain any of the

steps in the Selective Plating Process, let alone explain how one or more of those steps make its Selective Plating Process unique. Plaintiff's Disclosure also fails to describe what components or combination of components make its design novel or unique. For these reasons, the Court cannot say that the Disclosure puts Defendants on notice of the nature of Plaintiff's trade secret misappropriation claims. The Court finds that Plaintiff has failed to identify the trade secrets at issue in this case with reasonable particularity. The Court must deny Plaintiff's request for discovery of documents related to and an inspection of Defendants' Foresight Machine. Plaintiff, of course, may amend or supplement its Disclosure and serve such an amendment or supplement on Defendants. If Plaintiff sufficiently discloses its trade secrets with reasonable particularity, then Defendants are required to provide the discovery Plaintiff seeks. Until then, however, Defendants are under no obligation to do so.


IV. CONCLUSION

Accordingly,

IT IS ORDERED that the parties' Joint Motion for Discovery Dispute Resolution (Doc. 33) is **resolved in Defendants' favor**. Plaintiff is ordered to serve on Defendants, **by no later than March 21, 2023**, a disclosure which identifies—with reasonable particularity in a manner consistent with this Order—the trade secrets which Plaintiff contends Defendants have misappropriated. Defendants need not respond to discovery requests relating to the Foresight Machine until Plaintiff complies with this Order.

IT IS FURTHER ORDERED that, pursuant to this Court's March 10, 2023 Order, the depositions of Adrian Acuna and Alfredo Graff remain **stayed** for a period of **ten days from the date upon which Plaintiff serves the disclosure on Defendants**.

Dated this 14th day of March, 2023.


 Honorable Steven P. Logan
 United States District Judge